

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Rule making related to nurse aides

The Department of Human Services hereby amends Chapter 81, “Nursing Facilities,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 249A.4 and 2017 Iowa Acts, House File 306.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 249A.4 and 2017 Iowa Acts, House File 306.

Purpose and Summary

These adopted amendments add the use of online course curricula to meet the required minimum of 30 hours of classroom instruction and add a definition of “clock hour.” The amendments also add a process to allow a veteran to be deemed to satisfy the nurse aide training requirements based upon the training and experience acquired through the veteran’s service.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on January 31, 2018, as **ARC 3594C**.

The Department received comments from three respondents during the public comment period. A summary of the comments and the Department’s responses are as follows:

Comment 1: One respondent questioned the use of Iowa Code section 135C.14(2) as the legal authority for this rule making. Iowa Code section 135C.14 deals with the Department of Inspections and Appeals’ adoption and enforcement of rules setting minimum standards for health care facilities. While subsection (2) deals with the number and qualifications of all personnel having responsibility for any part of the care provided to residents, the respondent contended the rule-making authority did not extend to the Department of Human Services.

Department response 1: While Iowa Code section 135C.14(2) relates to the subject matter of the rules, the Department agrees that 2017 Iowa Acts, House File 306, and Iowa Code section 249A.4 provide the explicit authority for the Department of Human Services to adopt these amendments. The citation for rule-making authority has been changed to reflect this fact.

Comment 2: One respondent questioned whether 2017 Iowa Acts, House File 306, and the amendment proposed in Item 2 of **ARC 3594C** were in conflict with the federal regulations (42 CFR 483.150) that detail the criteria for the certification of nurse aides. The respondent stated that because any individual, including veterans, may currently seek to challenge the competency test, the amendment in Item 2 is not necessary to accomplish the intended result.

Department response 2: The Department does not believe that a change to the amendment in Item 2 based on the comment is necessary at this time. The Department’s rule making is at the express direction of the Iowa General Assembly and is consistent with federal law and with the administrative rules of other states.

Comment 3: One respondent questioned the language in proposed subparagraph 81.16(3)“a”(7), stating that the Centers for Medicare and Medicaid Services (CMS) recently approved changes to where, as long as the program coordinator has the requisite long-term care experience, the instructors in the nurse aide program who are under the supervision of the program coordinator would not be required to have the one year of long-term care experience.

Department response 3: The Department reviewed the Department of Inspections and Appeals’ Health Facilities Division website and found a clarification regarding nurse aide training program instructors. The clarification, which was posted on February 12, 2018, states:

“The Department has received clarification from the Centers for Medicare and Medicaid Services (CMS) related to the instructor qualifications for nurse aide training programs. CMS has agreed that as long as the training program coordinator has the requisite long-term care experience, the instructors in the nurse aide program who are under the supervision of the program coordinator would NOT be required to have the one year of long-term care experience. Hopefully this will help facilitate the hiring of qualified instructors for the nurse aide training programs.”

The Department does not believe a change to subparagraph 81.16(3)“a”(7) is necessary based on this clarifying statement. The rules, as written, follow and comply with federal regulations found in 42 CFR 483.152(a)(5).

Comment 4: One respondent was concerned that the learning needs of the individuals may not be met. The respondent stated that online training does not work for all and students should be made aware up front, regardless of the training setting, that they have a choice of face-to-face or online training.

Department response 4: The Department does not believe a change to the rules based on the comment is necessary at this time. The Department supports the need to provide a variety of training options for individuals and believes individuals will make the best choice in their learning methods.

Comment 5: One respondent expressed concern about the effectiveness of online training and commented that a plan or method should be in place to measure its effectiveness. The respondent stated that information regarding online training should be gathered and evaluated to determine the effect of online training on job turnover and whether the nurse aide students feel adequately prepared to do what is expected.

Department response 5: The Department does not believe a change to the rules based on the comment is necessary at this time. While the Department concedes that online training for nurse aides is relatively new, measuring the effectiveness of the training is outside the Department’s authority. The Department supports continued discussions on this issue with community stakeholders.

Comment 6: One respondent disagreed with the provided definition of “clock hour.” The respondent believes that the definition should include more than a set number of 60 minutes. The respondent also stated that the definition should be more expansive and include a definition that allows “clock hour” to include classroom instruction, prior equivalent experience, or both. The respondent stated that a broad definition of “clock hour” would allow nurse aide applicants to receive credit for the prior experience they received through different training programs or applicable experience to count as credit toward their hours of training to meet the competency evaluation program requirements.

Department response 6: The rules, as written, follow and comply with federal regulations found in 42 CFR 483.152 relating to the minimum requirements for approval of a nurse training and competency evaluation program. The Department does not have authority to deem or waive the requirements of the 75 clock hours of training to include classroom instruction, prior experience, or both. The rules do allow for veterans to provide documentation showing that the person has 75 clock hours of practical experience in a nurse aide role, which may include classroom instruction, prior equivalent experience, or

a combination of the two. The Department does not believe a change to the rules based on the comment is necessary at this time.

Adoption of Rule Making

This rule making was adopted by the Council on Human Services on March 7, 2018.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

There is an impact on private sector jobs and employment opportunities. By allowing online training and by deeming that veterans have satisfied requirements based on their military training and experience, this rule making will increase the direct care worker workforce. With the increase in workforce, nursing facilities will be able to hire more staff to provide care to their residents and nursing facility staff are less likely to have to work shorthanded.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 441—1.8(17A,217).

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on May 2, 2018.

The following rule-making actions are adopted:

ITEM 1. Adopt the following **new** definition of “Clock hour” in rule **441—81.1(249A)**:
“Clock hour” means 60 minutes.

ITEM 2. Rescind subrule 81.16(1) and adopt the following **new** subrule in lieu thereof:

81.16(1) Deemed meeting of requirements. A nurse aide is deemed to satisfy the requirement of completing a nurse aide training and competency evaluation approved by the department of inspections and appeals if:

a. The nurse aide successfully completed a nurse aide training and competency evaluation program before July 1, 1989, and

(1) At least 60 clock hours were substituted for 75 clock hours, and the person has made up at least the difference in the number of clock hours in the program the person completed and 75 clock hours in supervised practical nurse aide training or in regular in-service nurse aide education, or

(2) The person was found to be competent (whether or not by the state) after completion of a nurse aide training of at least 100 clock hours' duration, or

(3) The person can demonstrate that the person served as a nurse aide at one or more facilities of the same employer in Iowa for at least 24 consecutive months before December 19, 1989, or

(4) The person completed, before July 1, 1989, a nurse aide training and competency evaluation program that the department of inspections and appeals determines would have met the requirements for approval at the time it was offered; or

b. The person is a veteran, an active duty service member, or a member of the reserve forces, who has:

(1) Successfully completed a U.S. military training program that includes a curriculum comparable to the nurse aide training program required by this rule and has documented successful completion of that program with either a diploma, certifications, or Form DD 214 showing completion of hospital corpsman or medical service specialist or equivalent training, and

(2) Provided documentation showing that the person has 75 clock hours of practical experience in a nurse aide role, which may include classroom instruction, prior equivalent experience, or a combination of the two, and

(3) Successfully completed the nurse aide training and competency examination.

ITEM 3. Amend subrule 81.16(3) as follows:

81.16(3) *Requirements for approval of a nurse aide training and competency evaluation program.* The department has designated the department of inspections and appeals to approve required nurse aide training and ~~testing~~ competency evaluation programs. Policies and procedures governing approval of the programs are set forth in these rules.

a. For a nurse aide training and competency evaluation program to be approved ~~by the department of inspections and appeals, it, such program~~ shall, at a minimum:

(1) Consist of no less than 75 clock hours of training, ~~and~~

(2) Include at least the subjects specified in ~~81.16(3)~~ 81.16(3) "b," and

(3) Include at least ~~15 hours of laboratory experience~~, 30 hours of didactic theory instruction, which may be provided in a classroom instruction (the first 16 hours of which must occur before the nurse aide has resident contact) and 30 hours of supervised clinical training. Supervised clinical training means training in a setting in which the trainee demonstrates knowledge while performing tasks on a resident under the general supervision of a registered nurse or licensed practical nurse. ~~setting or through online course curricula, and~~

(4) ~~Ensure that students do not independently perform any services for which they have not been trained and found proficient by the instructor. It shall also ensure that students who are providing services to residents are under the general supervision of a licensed nurse or a registered nurse. Include at least 15 hours of laboratory experience provided in a face-to-face environment that complements the didactic theory curricula, and~~

(5) ~~Meet the following requirements for instructors who train nurse aides: Include 30 hours of supervised clinical training in a face-to-face environment and supervised by a department of inspections and appeals-approved instructor in a manner not inconsistent with the licensing requirements of the Iowa board of nursing, and~~

1. ~~The training of nurse aides shall be performed by or under the general supervision of a registered nurse who possesses a minimum of two years of nursing experience, at least one year of which shall be in the provision of long-term care facility services.~~

2. ~~Instructors shall be registered nurses and shall have completed a course in teaching adults or have experience teaching adults or supervising nurse aides.~~

3. ~~In a facility-based program, when the director of nursing is a registered nurse, the training of nurse aides may be performed under the general supervision of the director of nursing for the facility. The director of nursing is prohibited from performing the actual training.~~

4. ~~Other personnel from the health professions may supplement the instructor. Supplemental personnel shall have at least one year of experience in their fields.~~

5. ~~The ratio of qualified trainers to students shall not exceed one instructor for every ten students in the clinical setting.~~

(6) Contain information regarding competency evaluation through written or oral and skills testing. Ensure that students do not independently perform any services for which they have not been trained and found proficient by the department of inspections and appeals-approved instructor, and

(7) Meet the following requirements for department of inspections and appeals-approved instructors who train nurse aides:

1. The training of nurse aides shall be performed by or under the general supervision of a registered nurse who possesses a minimum of two years of nursing experience, at least one year of which shall be in the provision of long-term care facility services.

2. Instructors shall be registered nurses and shall have completed a course in teaching adults or have experience teaching adults or supervising nurse aides.

3. In a facility-based program, when the director of nursing is a registered nurse, the training of nurse aides may be performed by registered nurses under the general supervision of the director of nursing for the facility. The director of nursing is prohibited from performing the actual training.

4. Other personnel from the health professions may supplement the instructor. Supplemental personnel shall have at least one year of experience in their fields.

5. The ratio of department of inspections and appeals-approved instructors to students shall not exceed one registered nurse, or licensed practical nurse functioning as an assistant to a registered nurse, who is in the proximate area in the clinical setting, for every ten students in the clinical setting, and

(8) Contain information regarding competency evaluation through written or oral examination and skills demonstration.

b. No change.

c. Prohibition of charges.

(1) ~~No~~ A nurse aide who is employed by, or who has received an offer of employment from, a facility on the date on which the aide begins a nurse aide training and competency evaluation program or competency evaluation program may not be charged for any portion of the program including any fees for textbooks, ~~or other required evaluation or course materials, or nurse aide competency evaluations.~~

(2) If a person who is not employed, or does not have an offer to be employed, as a nurse aide becomes employed by, or receives an offer of employment from, a facility ~~not~~ no later than 12 months after completing a nurse aide training and competency evaluation program or competency evaluation program, the facility shall reimburse the nurse aide for costs incurred in completing the program or competency evaluation on a pro rata basis during the period in which the person is employed as a nurse aide. The formula for paying the nurse aides on a pro rata basis shall be as follows:

1. Add all costs incurred by the ~~aides~~ nurse aide for the course, books, and ~~tests~~ competency evaluations.

2. Divide the total arrived at in ~~No. 1~~ paragraph "1" above by 12 to prorate the costs over a one-year period and establish a monthly rate.

3. The nurse aide shall be reimbursed the monthly rate each month the nurse aide works at the facility until one year from the time the nurse aide completed the course.

d. and e. No change.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/28/18.